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No. 826

**In the Supreme Court of the United States**

**OCTOBER TERM, 1943**

**JAMES J. LAMONAH, PETITIONER**

**LESLEY C. GARNETT, JOHN W. FEELEY, AND ALLEN  
BAKER**

**ON PETITION FOR A WRIT OF HABEAS CORPUS FOR UNITED  
STATES PRISON OF APPEALS FOR THE DISTRICT OF  
COLUMBIA**

**BAKER FOR THE RESPONDENTS IN OPPOSITION**

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(1)



# In the Supreme Court of the United States

OCTOBER TERM, 1943

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No. 820

JAMES J. LAUGHLIN, PETITIONER

v.

LESLIE C. GARNETT, JOHN W. FIDELLY, AND ALLEN  
BAKER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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## OPINION BELOW

The per curiam opinion of the court of appeals (R. 49-50) is reported at 138 F. (2d) 931. The order of the district court denying petitioner's motion for leave to file a proposed third amended complaint appears at pages 41-42 of the record.

## JURISDICTION

The judgment of the court of appeals (R. 51) was entered on November 8, 1943. A petition for rehearing was denied on November 13, 1943 (R.

54). On February 11, 1944, the Chief Justice of the United States extended petitioner's time for filing a petition for a writ of certiorari to March 13, 1944 (R. 53), and on March 11, 1944, he granted petitioner an additional extension of time until March 28, 1944 (R. 53). The petition for a writ of certiorari was filed on March 28, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTION PRESENTED

Whether the district court abused its discretion in denying petitioner leave to file his proposed third amended complaint.

#### STATEMENT

Petitioner instituted an action for conspiracy and for malicious prosecution against respondents, a former United States attorney, an assistant United States attorney, and a police officer attached to the United States attorney's office (R. 3-14). The answer to the complaint filed by respondents alleged as a "further defense" that the complaint failed to state a claim upon which relief could be granted against respondents, in that the complaint showed on its face that respondents' acts were performed in the course of their official duties (R. 44-45). Without formal action by the district court, petitioner filed an amended complaint (R. 14-20), and, after respondents had

moved under Rule 12 (f) of the Federal Rules of Civil Procedure to strike the amended complaint (R. 45-46), again voluntarily amended his complaint without formal action by the court (R. 20-23). Motions by respondents to dismiss the second amended complaint on the ground that it failed to state a claim (R. 45-46) were sustained, and petitioner was given leave to move for permission to file a third amended complaint, provided that a copy of the proposed complaint accompanied the motion (R. 23). The motion was made (R. 23-41) and denied (R. 41-42). On appeal, the Court of Appeals for the District of Columbia affirmed the order denying leave to file the proposed third amended complaint (R. 51).

The second amended complaint alleged in substance that respondents, acting maliciously, without probable cause, and palpably beyond the scope of their official duties, prevailed upon certain persons to make false charges against petitioner and prepare false documents; that on the basis of such false testimony respondents brought about petitioner's indictment and trial on several criminal charges of which he was ultimately acquitted (R. 20-23). The proposed third amended complaint set forth the alleged reasons which inspired respondents' malice towards petitioner. It further alleged that respondents induced certain persons to make false charges against petitioner and transmitted such charges to the Bar Association in an

endeavor to harass him in the practice of law; that respondents endeavored to induce petitioner's clients to dispense with his services; that on the promise of lower prison sentences they induced certain of petitioner's clients to make false charges against him and by means of false charges and forged documents succeeded in having him indicted and tried on criminal charges of which he was ultimately acquitted. The proposed complaint also set forth the means by which petitioner allegedly discovered the alleged conspiracy and annexed as part of the complaint affidavits by the persons who allegedly had been induced to make the false charges. (R. 24-33.)

#### ARGUMENT

The narrow question presented by this petition is whether the district court abused its discretion in denying petitioner leave to file his proposed third amended complaint.<sup>1</sup> We think that it is clear that no abuse of discretion was shown.

The gist of the complaint is that respondents maliciously instituted criminal charges against petitioner by the use of false testimony. Petitioner contends (Pet. 9) that the allegations that

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<sup>1</sup> Under Rule 15(a) of the Federal Rules of Civil Procedure "when justice so requires" the court may allow the filing of amended pleadings. The granting of such leave is a matter of discretion and is therefore not subject to review except for abuse. *Aetna Casualty & Surety Co. v. Abbott*, 130 F. (2d) 40, 44 (C. C. A. 4); cf. *United States v. Atherton*, 102 U. S. 372, 375.

respondents induced certain persons to make the false charges and prepare the false documents which formed the basis of the prosecution (paragraphs 18 and 19, R. 29-30) take this complaint out of the general rule that prosecuting officials are immune from civil liability for acts performed in their official capacity even though actuated by malice.<sup>2</sup> However, the immunity of a government official from civil liability extends to "action having more or less connection with the general matters committed by law to his control or supervision." *Spalding v. Vilas*, 161 U. S. 483, 498; *Cooper v. O'Connor*, 99 F. (2d) 135, 139 (App. D. C.), certiorari denied, 305 U. S. 642. The obtaining of evidence to be presented to a grand jury is as much a function of a prosecuting attorney as the presentation of such evidence. Hence, under the cases cited, respondents cannot be subjected to civil liability for such acts.

Petitioner also contends (Pet. 8) that paragraphs 13 and 14 of the proposed complaint, in alleging that respondents Baker and Garnett induced certain persons to make false charges

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<sup>2</sup> *Cooper v. O'Connor*, 99 F. (2d) 135 (App. D. C.), certiorari denied, 305 U. S. 642; *Yaselli v. Goff*, 12 F. (2d) 396 (C. C. A. 2), affirmed, 275 U. S. 503; *Anderson v. Rohrer*, 3 F. Supp. 367 (S. D. Fla.); cf. *Spalding v. Vilas*, 161 U. S. 483; *Jones v. Kennedy*, 121 F. (2d) 40 (App. D. C.), certiorari denied, 314 U. S. 665; *Glass v. Ickes*, 117 F. (2d) 273 (App. D. C.), certiorari denied, 311 U. S. 718; *Adams v. H. O. L. C.*, 107 F. (2d) 139 (C. C. A. 8); *Phelps v. Dawson*, 97 F. (2d) 339 (C. C. A. 8).



against petitioner and transmitted such charges to the Bar Association (R. 27-28), charged acts which are not within the scope of the immunity granted to prosecuting officials. It may be, as the court below suggested (R. 50), that allegations of the malicious institution of false charges in an endeavor to cause an attorney's disbarment<sup>3</sup> would present a basis for a civil action against prosecuting officials.<sup>4</sup> In the instant case, however, there is no suggestion that the acts alleged in paragraphs 13 and 14 resulted in the temporary disbarment of petitioner alleged in paragraph 27 (R. 32), or even in formal charges against petitioner. In themselves these paragraphs present a situation analogous to that where efforts to cause institution of criminal proceedings have proved unsuccessful and have therefore been held not to be actionable. *Melvin v. Pence*, 130 F. (2d) 423 (App. D. C.); *Larocque v. Dorsey*, 299 Fed. 556, 559 (C. C. A. 2); *Cooper v. Armour*, 42 Fed. 215 (C. C. N. D. N. Y.). And in any event, as the

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<sup>3</sup> Malicious attempts to effect revocation of a license have been held to support actions for malicious prosecutions. *Melvin v. Pence*, 130 F. (2d) 423 (App. D. C.); *National Surety Co. v. Page*, 58 F. (2d) 145 (C. C. A. 4), rehearing denied, 59 F. (2d) 370.

<sup>4</sup> The court below indicated (R. 50) that in its judgment the presentation of charges to a Bar Association, while privileged, is beyond the scope of a prosecutor's normal duties and therefore not protected by the immunity doctrine expressed in *Cooper v. O'Connor*, *supra*. Cf. *Colpoys v. Gates*, 118 F. (2d) 16 (App. D. C.).

court below held, the allegations of these paragraphs, together with those of paragraph 27, are clearly too vague and indefinite to stand alone as a cause of action when the main allegations of the complaint relating to official misconduct on the part of the respondents are stricken.

Moreover, the question before the district court in the instant case was whether to allow the proposed third amended complaint as a whole to be filed. Paragraphs 13, 14, and 27 constitute a minor undeveloped portion of a long complaint based primarily on the charge of malicious prosecution of criminal offenses. By its dismissal of the second amended complaint, the district court had already ruled that the criminal proceedings presented no ground for relief, and petitioner had taken no appeal from that order. Yet the bulk of his third amended complaint consisted of a repetition, with only unimportant amplifications of evidentiary details, of the very same allegations which he had made in the second amended complaint. Clearly, therefore, the inference is warranted that petitioner's asserted cause of action rested primarily upon the allegations of false criminal charges just as had been the case with all the prior complaints he had filed, and the court was under no duty to allow him to file a complaint the main portion of which consisted of a repleading of facts which had already been properly held insufficient to constitute a cause of action.

**CONCLUSION**

The action of the district court in denying leave to file a third amended complaint involved no abuse of discretion, but on the other hand was plainly in accordance with applicable decisions of this Court, and the judgment of the court below affirming that action presents no question warranting further review. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

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APRIL 1944.

